# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

| SHELLY D. PARTON Claimant                      | )                              |
|--|--------------------------------|
| VS.  | )<br>)<br>) Docket No. 213,197 |
| EVCON INDUSTRIES, INC. Respondent              | ) Docket No. 213,197           |
| AND  | Í                              |
| AMERICAN INTERNATIONAL GROUP Insurance Carrier | )<br>)                         |

#### **ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on July 12, 1996.

# **ISSUES**

The sole issue on appeal is whether claimant met her burden of establishing that she suffered accidental injury arising out of and in the course of her employment.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds claimant has failed to meet the burden to establish her injury arose out of and in the course of her employment and the Order of the Administrative Law Judge should be reversed.

Claimant alleges she injured her low back on May 6, 1996. She started working for respondent on August 23, 1994, and then took time off because of her pregnancy. She was off work for almost one year and alleges that she injured her back the first day she returned to work May 6, 1996.

The Appeals Board finds the evidence fails to satisfy claimant's burden in part because it seems apparent claimant has grossly exaggerated the work activities on the day she returned to work. She testified that she lifted blower motors weighing 34 pounds and lifted 50 to 60 per hour placing them above her head. Mr. Brian Hartwig, employer

relations and safety supervisor for respondent, testified that the parts claimant was lifting, part number 1468-420, weighed approximately five pounds. Her quota was 90 per day. He testified that the employees varied from that quota five to ten either way. He also testified that she placed them on a table 48 inches off the ground, not overhead. When confronted with Mr. Hartwig's testimony, claimant acknowledged uncertainty about the weight and number. The Appeals Board finds the testimony of Mr. Hartwig more convincing.

Mr. Hartwig also testified that claimant did not advise him of any injury at work and, instead, told him she was not able to do the job because of a prior injury. The record indicates claimant had a prior low back injury in 1992 with symptoms quite similar to those claimed in this case.

Finally, the record contains no expert medical opinion attributing the symptoms to an on-the-job injury. Claimant had seen Dr. Michael P. Estivo for her 1992 injury. Following the injury at issue in this case, claimant again went, on her own, to Dr. Estivo. His report relates the history claimant testified to in this case but does not express an opinion about the cause of claimant's current symptoms. Under these circumstances, and in the absence of convincing expert medical opinion, the Appeals Board concludes that the evidence falls short of meeting claimant's burden.

**WHEREFORE**, the Appeals Board finds that the Order of Administrative Law Judge Nelsonna Potts Barnes dated July 12, 1996 should be, and the same is hereby, reversed.

| IT IS SO ORDERED. | IT | IS | SO | OR | DE | RED. |  |
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| Dated this | day of October 1996. |
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## **BOARD MEMBER**

c: Gregory Lower, Wichita, KS
Vincent A. Burnett, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director